COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO.: 2013-SC-000809-D

RUTH ANN SADLER — APPELLANT

v. APPEAL FROM AN ORIGINAL ACTION
COURT OF APPEALS CASE NO.: 2012-CA-001157
FAYETTE CIRCUIT COURT CASE NO. ~~12-CI-00040~~ 96-CI-02799

BARBARA LOIS VAN BUSKIRK — APPELLEE

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# BRIEF FOR APPELLANT

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This is to certify that a true and accurate copy of this Brief for Appellant was filed with the Kentucky Supreme Court and served by first class mail, postage prepaid, to: Clerk of Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Clerk of Fayette Circuit Court, Robert F. Stephens Courthouse, 120 N. Limestone, Lexington, Kentucky 40507; Hon. Kathy Stein, Robert F. Stephens Courthouse, 120 N. Limestone, Lexington, Kentucky 40507; and Amy E. Dougherty, Esq., Carolyn L. Kenton, Esq., Bluegrass Elder Law, PLLC 120 N. Mill Street, Suite 300, Lexington, Kentucky 40507, Attorneys for Appellee, Barbara Lois VanBuskirk; on this the 21st day of October, 2014.

Thomas W. Miller
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## I. INTRODUCTION

This case involves spouses who, upon divorce and as part of a written Settlement Agreement, specifically waived and relinquished all interest in any retirement accounts held by the other. Nonetheless, the Court of Appeals found that the ex-spouse was the beneficiary of the decedent's Individual Retirement Account "IRA," rather than the decedent's estate. The Appellant, who is Administratrix of the decedent's estate, appeals that Opinion. (Attached as Appendix 1).

## II. STATEMENT CONCERNING ORAL ARGUMENT

Appellant Ruth Ann Sadler respectfully requests the Court hear oral arguments in this matter because the Court of Appeals' Opinion misinterpreted and misapplied Kentucky law, and because there is substantial out-of-state case law compelling the result urged by Appellant.

III. STATEMENT OF POINTS AND AUTHORITIES

## IV. STATEMENT OF THE CASE

The Appellee, Barbara Lois Van Buskirk (hereinafter "Barbara"), was married to Richard Van Buskirk (hereinafter "Richard,") until 1996. On March 13, 1986, and while the parties were still married, Richard opened an IRA with Dreyfus and named Barbara as the beneficiary. (R.A. 42, attached as Exhibit C of Appendix 2). In 1996, the parties divorced and entered into a Property Settlement Agreement ("Agreement"). (R.A. 32, Attached as Exhibit B to Appendix 2). Pursuant to the terms of the Agreement, both parties waived their respective rights to each other's estate upon death. (R.A. 34.) Moreover, under the terms of the Agreement, each party agreed to retain the retirement accounts held in his or her individual name, and each disclaimed "any interest" in any retirement accounts held by the other, agreeing to make no "future" claim against the same. *Id.* (R.A. 34).

Richard did not change the beneficiary designation relative to the IRA through Dreyfus's internal forms following the divorce.

After the divorce, Richard married the Appellant, Ruth Ann Sadler (hereinafter "Ruth Ann"). Richard passed away on November 15, 2011, and Ruth Ann was appointed Administratrix of Richard's Estate. (R.A. 31, attached as Exhibit A of Appendix 2). Ruth Ann then contacted Dreyfus to inquire about Richard's IRA and was informed that Barbara remained the named beneficiary of the account.

As a result, on April 30, 2012, Ruth Ann filed a Motion to Intervene in the Fayette Circuit Court dissolution action, as well as a Motion to Declare that Barbara has no rights in and to the Dreyfus IRA. (R.A. 28, attached as Appendix 2). Barbara failed to file a responsive pleading and did not appear in Court on May 4, 2012, when both

Motions were heard. The trial court granted Ruth Ann's Motion to Intervene and took the Motion to Declare that Barbara had no rights to the IRA under submission. The trial court issued an Order on May 15, 2012, allowing Barbara thirty days to file a written objection to the Motion as filed. (R.A. 48, attached as Appendix 3). Barbara failed to file a written objection to the Motion. Ruth Ann filed a Memorandum of Law on June 4, 2012. (R.A. 50, attached as Appendix 4). Thus, the trial court ruled on an unopposed Motion.

On June 27, 2012, the trial court issued an Order Overruling Ruth Ann's Motion to declare that Barbara has no rights to the IRA, and Ruth Ann appealed to the Court of Appeals. (R.A. 53, Attached as Appendix 5). Barbara retained counsel at the time of the appeal.

In an Opinion dated November 22, 2013, the Court of Appeals affirmed the trial court. *See* Opinion, attached hereto as Appendix 1.

## ARGUMENT

### I. STATEMENT CONCERNING PRESERVATION OF ERROR AND STANDARD OF REVIEW

The issues raised herein were preserved for appellate review by inclusion in Ruth Ann's Motion to Declare and Memorandum of Law, and in her Appellate Brief and Reply Brief. (R.A. 28; R.A. 50.)

Because interpretation of a property settlement agreement is a matter of contract interpretation, this Court reviews the trial court's findings and the findings of the Court of Appeals *de novo*. *See* KRS § 403.180(5) ("Terms of the [property settlement] agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms"); *Lynch v. Claims*

*Management Corp.*, 306 S.W.3d 93, 96 (Ky. App. 2010) ("Generally, the construction and interpretation of a contract is a matter of law and is also reviewed under the *de novo* standard").

## II. THE COURT OF APPEALS ERRED BY FAILING TO UPHOLD THE UNAMBIGUOUS LANGUAGE OF THE AGREEMENT AND BY ARBITRARILY DISTINGUISHING THE "BENEFICIAL INTEREST" FROM "OWNERSHIP INTEREST"

This issue was preserved for appellate review by inclusion in Ruth Ann's Motion to Declare and Memorandum of Law, and in her Appellate Brief and Reply Brief. (R.A. 28; R.A. 50.)

KRS § 403.190 mandates that the trial court assign and divide marital property in a divorce action. Richard was assigned certain property that included his Dreyfus IRA. Likewise, Barbara was assigned all retirement accounts in her name as her sole and separate property. In the Agreement, each party waived all rights against the other's estate upon death of the other. It is clear that Richard named Barbara as beneficiary of the account well prior to the parties' divorce.

Although Richard did not change the beneficiary of his IRA through Dreyfus following entry of the Decree dissolving the parties' marriage, Barbara was divested of all rights in his IRA pursuant to the plain language of the parties' Agreement. The Agreement provides:

> *Wife's Waiver.* **Wife does hereby waive, release, and relinquish unto Husband, his heirs and assigns forever, all of her right, title, and interest in and to all property now owned or hereafter acquired by Husband**, including the right of dower, and does further waive, release, and relinquish all claims of future support or maintenance that she may have against him except as hereinafter set forth in this agreement.

(R.A. 33; para. 2 (emphasis added), Attached hereto as Exhibit B of Appendix 2). The parties further agreed:

> *Insurance and Retirement.* Husband and Wife each have in his/her own name one or more Individual Retirement Account(s). **The parties mutually agree to make no claim upon any interest owned by the other, now or in the future**, in the current accounts and any life insurance, retirement, pension, or annuity program, or contract either may acquire except as otherwise provided in this agreement; and said parties agree that any such interest owned by either party in a life insurance, retirement, pension or annuity program, or contract **is and shall remain their separate and individual property**, except as otherwise provided in this agreement.

*Id.* at para. 5 (emphasis added) (R.A. 34). The Agreement further provides:

> Husband and Wife mutually agree that the terms and conditions of this agreement **shall be binding upon their respective estates.**

*Id.* at para. 18 (emphasis added) (R.A. 37, attached hereto as Exhibit B of Appendix 2).

The Court of Appeals began its analysis by citing the unambiguous statement within the Agreement that the parties "mutually agree to make no claim upon any interest owned by the other, now or in the future in the current accounts . . . ." Opinion, Appendix 1, p. 4. However, the Court then concluded that the Agreement "is silent as to the assignment of any beneficial interest." *Id.* Elsewhere in its Opinion, the Court held that "beneficial and ownership interest are distinct and separate from each other," citing only *Black's Law Dictionary*. *Id.* at p. 7. The Court of Appeals simply ignored that the Agreement unequivocally waives "**any** interest" of each party in the retirement accounts of the other. (Emphasis added). Thus, the Agreement is not "silent" as to the "beneficial" interest – a beneficial interest is "any interest" in a retirement account. *See e.g., Allen v. Lawyers Mut. Ins. Co. of Kentucky,* 216 S.W.3d 657, 659 (Ky. App. 2007) (internal citation omitted) (emphasis added) ("Where there is no ambiguity, a written instrument is

to be strictly enforced according to its terms which are to be interpreted **by assigning language its ordinary meaning** and without resort to extrinsic evidence"). *See also Miles v. Dawson*, 830 S.W.2d 368 (Ky. 1991) ("The use of the word 'any' is broad and general" and, when construing statutes, the word "any" means "all").

It is undisputed that the Dreyfus IRA existed at the time of the divorce in 1996 and was awarded solely and exclusively to Richard. Barbara agreed to "make no claim upon any interest owned by [Richard], now or in the future," with regard to the IRA in particular. Any form designating a beneficiary to the account would constitute an internal document between Richard and Dreyfus, whereas the Agreement is an unambiguous contract between Richard and Barbara, based on a meeting of their minds. Therefore, Barbara cannot now claim that the IRA is her property solely because Richard failed to change the beneficiary through an internal Dreyfus form. In attempting to assert an interest in the IRA, Barbara is necessarily making a claim on an interest solely owned by Richard.

Through their Agreement, Barbara waived her rights to Richard's IRA just as Richard waived his rights to Barbara's IRA. Such a waiver is enforceable under Kentucky law. *See, e.g., Weinberg v. Gharai*, 338 S.W.3d 307, 314 (Ky. App. 2011) ("Our law is clear that a "waiver" is a voluntary and intentional surrender or relinquishment of a known right, or an election to forego an advantage which the party, at his option, might have demanded or insisted upon"). Barbara has never argued or suggested that she was unaware that Richard possessed the Dreyfus IRA at the time she entered into the Agreement or that she was unaware that she was waiving her rights in the IRA by signing the Agreement. Under these circumstances, Barbara is bound by the

unambiguous terms of the written contract, and she may not attempt to avoid those terms sixteen years after executing the Agreement.

The Court must enforce the terms of the Agreement between the parties. "When a contract is plain, unambiguous and fair, not vitiated by fraud nor mistake in its execution, the courts are not authorized to make for the parties to it a different one, or to construe it contrary to its express terms." *Holly Creek Production Corp. v. Rose*, 284 S.W.3d 543, 545 (Ky. App. 2009). "Furthermore, where a contract is free from ambiguity, it needs no construction and will be performed or enforced in accordance with its express terms." *First Commonwealth Bank of Prestonsburg v. West,* 55 S.W.3d 829, 836 (Ky. App. 2000) (citation omitted).

The Court of Appeals' ruling appears to be based upon the omission of the word "beneficiary" or "beneficial" from the Agreement. However, under the Agreement, the parties clearly waived **all interest** they had in the property awarded to the other during the divorce, and in the IRAs of the other in particular. "**All** of [Barbara's] right, title, and interest in and to all property now owned or hereafter acquired by Husband" necessarily includes her beneficiary interest because a beneficiary interest is a "right, title and interest" in the IRA owned by and awarded to Richard. (Emphasis added). Paragraph 5 of the Agreement, pertaining specifically to retirement accounts, is similarly unequivocal. ("The parties mutually agree to make **no claim** upon **any interest** owned by the other, now or in the future, in the current accounts . . . except as otherwise provided in this agreement . . ."). Agreement, para. 5 (emphasis added) (R.A. 34). The Agreement need not expressly state that Barbara may not claim an interest in the IRA as a "beneficiary" when it clearly denies Barbara **all** rights to and interest in this account. Barbara

contractually waived all rights to the Dreyfus IRA, and she is bound by the unambiguous terms of the Agreement.

## III. THE COURT OF APPEALS ERRED BY RELYING ON CASE LAW WHICH IS DISTINGUISHABLE FROM THE INSTANT CASE AND IN EXTENDING THAT CASE LAW, AND BY FAILING TO APPLY *NAPIER V. JONES.*

This issue was preserved for appellate review by inclusion in Appellant's Motion to Declare and Memorandum of Law, and in Ruth Ann's Appellate Brief and Reply Brief. (R.A. 28; R.A. 50).

The case law relied upon by the Court of Appeals is distinguishable and therefore not controlling. The Court of Appeals erred by extending that case law to situations where, as here, the asset at issue is specifically addressed and disposed of in a property settlement agreement.

In *Ping v. Denton,* 562 S.W.2d 314 (Ky. 1978)[1], the husband had a life insurance policy during the marriage, but unlike the instant case, it was not assigned to either party in the divorce decree. *See Ping,* 562 S.W.2d at 317 ("In the case at bar, there is nothing in the record to indicate that the terms or provisions of the decree of dissolution of marriage ... made any provision for the disposition of the policy of insurance **or** of any interest of the named beneficiary") (emphasis added). The husband passed away without removing his former wife as the beneficiary of the policy. The trial court ruled that the dissolution of the marriage by itself did not terminate the wife's ability to recover the

[1] *Ping* overruled a line of cases which held that divorce terminated the ex-spouse's status as a designated beneficiary based on the former KRS 403.060 and KRS 403.065, "restoration" statutes which provided that, upon divorce, each spouse was restored to all property interests gained by the other during marriage. Those statutes had been repealed and superseded by KRS 403.190 by the time of the Court's decision in *Ping.* Therefore, the *Ping* Court held that they were inapplicable. *See Ping,* 562 S.W.2d 316; *Sea v. Conrad,* 159 S.W. 622 (Ky. 1913); *Bissell v. Gentry,* 403 S.W.2d 13 (Ky. 1966); *Shellman v. Independence Life and Accident Ins. Co.,* 523 S.W.2d 221 (Ky. 1975).

death benefit on the policy. *Id.* Again, this is distinguishable from the instant case where the parties specifically contemplated division of their retirement accounts and contractually waived any interest in the accounts held by the other.

Here, the Court of Appeals noted, but simply ignored, the obvious distinction between *Ping* and the instant case. First, it stated that, in *Ping,* "[t]he Kentucky Supreme Court addressed a case where the divorce decree made ***no*** disposition of a life insurance policy in which the wife was designated as the beneficiary." Opinion, Appendix 1, p. 4 (emphasis added). The Court further correctly noted that the *Ping* Court held that divorce ***alone*** does not divest the former spouse of his status as beneficiary, but ignored the fact that, in the instant case, the IRA was specifically addressed and assigned to Richard. Moreover, Barbara disclaimed any and all interest she had in the asset, including the right to make any future claim against it. A beneficial interest is necessarily a "future" claim.

*Ping* was interpreted in *Napier v. Jones*, 925 S.W.2d 193 (Ky. App. 1996). *Napier* involved stock awarded to the husband in the divorce and owned jointly with right of survivorship. The husband passed away, and his former wife argued that she was entitled to the stock upon his death. Citing *Ping*, the Court held: "when a circuit court has decided the issue of ownership of specific property **and made provision for it in the divorce decree, *Ping* is inapplicable.**" *Id.* at 196 (emphasis added). The Court further held:

> In light of the Supreme Court's recognition that the circuit court has the power to divest one spouse of an interest in property which he or she would otherwise take upon the other's death, we think it is a small step to the conclusion that **the circuit court's decree, when it specifically awards the property to one spouse, terminates whatever prior interest the ex-spouse maintained in the property.** Here, the decree, affirmed by this Court, operated to terminate the joint tenancy with right of survivorship in the HCA stock. *Id.* at 196-97 (some emphasis added).

Therefore, Kentucky law clearly holds that, when property is specifically identified and divided in a divorce decree, any interest a surviving spouse may have is divested at the time of divorce. The Court of Appeals held that *Napier* was distinguishable, asserting: "The *Napier* facts involve an asset owned by both parties prior to the dissolution action and specifically dealt with and divested in the decree." Opinion, Appendix 1, at p. 5. The Court ignored the fact that Barbara waived all rights to any interest in Richard's IRAs through the unequivocal Agreement. The asset was "specifically dealt with and divested in the decree." Barbara cannot now claim any right to the Dreyfus IRA, whether as a "beneficiary" or otherwise.

The Court of Appeals further relied on *Hughes v. Scholl*, 900 S.W.2d 606 (Ky. 1995). There, the Court held that "the divesture language should be clear and unambiguous. A general waiver of any interest in the property of the other spouse is insufficient to destroy a beneficiary's right to receive insurance policy proceeds." *Hughes,* 900 S.W.2d at 608 n. 2; Opinion, Appendix 1, p. 5-6. *Hughes* is not dispositive of this case.

*Hughes* involved a life insurance policy. In *Hughes,* as in *Ping*, the property settlement agreement was silent as to the disposition of the insurance policy. *Id.* at 607. Unlike *Hughes*, the parties here each divested all interest they had in the other's IRAs. The *Hughes* Court addressed the narrow question of "what effect, if any, divorce has on a former spouse's expectancy as a life insurance policy beneficiary." *Id.* at 607. The Court's holding clearly applies only to situations where the property settlement agreement does not specifically address the asset at issue. The Court summarized its ruling as follows: "we hold that the rights of an insurance policy beneficiary, including

the right to receive the policy's proceeds upon the insured's death, **are not affected by the mere fact of a divorce** between the beneficiary and the insured." *Id.* at 608 (emphasis added). Again, both *Hughes* and *Ping* are inapposite because, in those cases, the property settlement agreement and decree were both silent regarding the insurance policy.

The *Hughes* Court further explained:

> In sum, we are not persuaded to abandon the rule of *Ping v. Denton, supra*. To begin with, the rule applies **only in limited situations where neither the parties' property settlement agreement nor decree specifies that the former spouse is divested of her expectancy as beneficiary and the insured has not otherwise removed the former spouse as his beneficiary after the divorce.**
>
> *********
>
> Unless and until the Kentucky General Assembly legislates a different result, we hold that the rights of an insurance policy beneficiary, including the right to receive the policy's proceeds upon the insured's death [analogous to the right to receive the proceeds of a joint account with a right of survivorship], are not affected by the **mere** fact of a divorce between the beneficiary and the insured.

*Hughes*, 900 S.W.2d at 608 (emphasis added). One of the two prerequisites for application of the *Ping* rule, therefore, is missing here: the Agreement does specifically address future interests in the asset. Indeed, this Court carefully limited its holding in *Hughes* by adding: "We hasten to add that our holding in no way limits the power of divorcing parties to provide for termination of either spouse's beneficiary expectancy in a property settlement agreement." *Id.*

The issue of whether language addressing an insurance policy (or other asset) in a property settlement agreement is sufficient to disclaim the beneficiary interest in the policy was not before the *Hughes* Court, because there, the property settlement agreement failed to address, mention, or divide the insurance policy at all. The Court emphasized

that the Hughes' settlement agreement "did not specifically address the insurance policies." *Id.* at 607. That is not the case here.

The *Hughes* Court made clear that the rule of *Ping* – that dissolution of marriage *by itself* does not terminate an ex-spouse's right to recover as a beneficiary under an insurance policy – applies only where the property settlement agreement does not divest the ex-spouse of their interest in the life insurance policy. There are no similar facts here. Barbara expressly agreed to forego all rights and interest in any retirement accounts held by Richard. The Court of Appeals has therefore erroneously extended *Ping* and *Hughes* to situations in which the asset is specifically disposed of by the property settlement agreement.

Alternatively, the Agreement at issue here is sufficient to divest Barbara of her interest in the IRA because, as required by *Hughes*, the divestiture language is specific to retirement accounts, and is "clear and ambiguous." *Hughes,* 900 S.W.2d at 608. The trial court relied on language contained in a footnote in *Hughes*, which provides:

> The divestiture language should be clear and unambiguous. A general waiver of any interest in the property of the other spouse is insufficient to destroy a beneficiary's right to receive insurance policy proceeds.

(Order Overruling, p. 5, Appendix 4; R.A. 54); *Hughes,* 900 S.W.2d at 608 n. 2.

Richard does not rely exclusively on a "general waiver" pertaining to "property of the other spouse." Rather, the parties specifically agreed to "make no claim upon any interest owned by the other, now or in the future, in the current [retirement] accounts" and further agreed that "any such interest owned by either party in a life insurance, retirement, pension, or annuity program, or contract is and shall remain their separate and individual property . . . ." (Agreement, para. 5; R.A. 34). The Agreement therefore does

explicitly divest each party of their entire interest in and to the other's IRA. This necessarily includes the beneficiary interest as it is an interest Barbara held prior to signing the Agreement.

In *Ping* and *Hughes*, the property settlement agreements and decrees were entirely silent as to the insurance policy and the party to whom it was awarded, much less whether the other party waived his or her rights to it. When all interest in a specific asset has been specifically disclaimed pursuant to a property settlement agreement, a former spouse must not be permitted to later assert any interest in that property, whether as a "beneficiary" or otherwise. The divestiture language at issue here is far more specific, clear, and unambiguous than the general waiver addressed in *Hughes* (which failed to even mention the insurance policy). Therefore, the Court of Appeals erred in relying on (and extending) *Ping* and *Hughes*, and in failing to apply the rule of *Napier v. Jones.*

## IV. THE COURT OF APPEALS' RULING WAS ERRONEOUS IN LIGHT OF KRS 394.092 AND THE LEGISLATIVE INTENT EXPRESSED THEREIN; THE RULING IS FURTHER INCONSISTENT WITH THE GENERAL RULES OF CONTRACT INTERPRETATION AND WILL FRUSTRATE THE REASONABLE EXPECTATIONS OF DIVORCING PARTIES

This issue was preserved for appellate review by inclusion in Appellant's Motion to Declare and Memorandum of Law, and in Ruth Ann's Appellate Brief and Reply Brief. (R.A. 28; R.A. 50).

KRS 394.092 provides that, even if a person fails to change his or her last will and testament after a divorce decree is entered, the surviving ex-spouse will not receive his or her share of the estate awarded by the will:

> If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a

> general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse.

KRS 394.092. This provision clearly reflects the legislative intention to divest an ex-spouse of as much interest in the other spouse's estate as possible. That legislative intention should be honored in this case.

KRS 391.360, on the other hand, makes transfers of IRAs (among other types of multiple-party accounts) nontestamentary:

> A written provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certified or uncertified security account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary.

KRS 391.360. Pursuant to this statute, and as noted by Judge Taylor in his Concurrence, "a property settlement agreement or other writing entered into by the parties in a divorce has no effect on a prior written instrument naming a beneficiary for an IRA or a pension account unless that divorce agreement specifically extinguishes the beneficiary's right to receive the property upon the death of the party who owns the IRA or pension account." Opinion, Appendix 1, Concurrence, p. 9.[2] However, "[h]ad the IRA in question been a probatable asset (not subject to KRS 391.360) and subject to disposition under

[2] The Agreement between Barbara and Richard in this case satisfies that test by specifically waiving "all of [Barbara's] right, title, and interest in and to all property now owned or hereafter acquired by" Richard, and by stating that both parties "mutually agree to make no claim upon any interests owned by the other, now or in the future" specifically as to the other party's retirement account.

appellant's will, KRS 394.092 would have been applicable and prevented the proceeds of the IRA from passing to appellee." *Id.* at p. 8-9. "Similarly, had the property in question been a state retirement annuity, the divorce would have terminated the ex-spouse's status as a beneficiary as a matter of law under KRS 61.542." *Id.* at p. 10.

Judge Taylor's Concurrence appropriately characterizes former Chief Justice Stephens' Dissent in *Hughes*, 900 S.W.2d at 608-09, as "well-taken". Opinion, Appendix 1, p. 9. In that Dissent (in which Justice Spain joined), Chief Justice Stephens urged the creation of a rebuttable presumption that, when an insured is divorced, his or her former spouse is removed as a beneficiary from the insurance policy. *Hughes,* 900 S.W.2d at 608. He explained:

> **Since all legal ties are extinguished when legally divorced, a divorced insured should and would reasonably expect that his or her spouse would no longer remain as a beneficiary on his or her policy.**
>
> The majority opinion emphasizes that other legally binding documents where spouses have legal interests are immediately affected by a divorce, but argues that they are distinguishable. These situations include will bequests and state retirement annuities. **I do not find persuasive the majority's argument that these are distinguishable from the case before us because they are statutorily enacted changes. The purpose behind these statutory enactments in the first place is precisely because it is reasonable for a person to expect that all interests would be void upon divorce.**
>
> By adopting the [rebuttable presumption] approach urged by appellant, both parties' interests are protected. First, because it is reasonable the owner of the policy would expect the designation to be void, his interests are protected. Second, if the divorced insured wishes to maintain the beneficiary status of his or her ex-spouse, he or she may do so by redesignating that person after the date of the divorce decree.

*Id.* at 608-09 (emphasis added).

Chief Justice Stephens' concerns regarding the parties' reasonable expectations apply with equal force to IRAs. As the Court of Appeals acknowledged, a property

settlement agreement is an enforceable contract between the parties. Opinion, Appendix 1, p. 3 (citing *Pursley v. Pursley*, 144 S.W.3d 820, 826 (Ky. 2004)). Kentucky law concerning the construction of signed, written agreements between parties is summarized as follows:

> The primary object in construing a contract or compromise settlement agreement is to effectuate the intentions of the parties ... "Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible." Where a contract is ambiguous or silent on a vital matter, a court may consider parol and extrinsic evidence involving the circumstances surrounding execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties.
>
> Absent an ambiguity in the contract, the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence ... A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations ... The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms . . .

*Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 384–85 (Ky. App. 2002) (internal citations omitted). Therefore, the "cardinal rule" governing Courts in the interpretation of contracts "is to ascertain the intention of the parties thereto and give effect to that intention . . . ." *Siler v. White*, 226 S.W. 102, 104 (Ky. 1920). Consistent with that fundamental principle, Kentucky Courts have long held that, in the absence of an ambiguity, written contracts are to be enforced strictly according to their terms. *See, e.g., Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003) (quoting *O'Bryan v. Massey-Ferguson, Inc.*, 413 S.W.2d 891, 893 (Ky. 1996)).

Here, the Agreement unambiguously and specifically provides that Barbara was divested of "any interest" owned by Richard in Richard's IRA, and waived the right to make any claim as to that interest, whether "now or in the future." The Court of Appeals'

interpretation of that divestiture and waiver language as failing to encompass Barbara's "beneficial" as well as ownership interest in the IRA is not consistent with Kentucky's long-standing rules for the interpretation and enforcement of property settlement agreements. Moreover, it certainly does not comport with the intentions and expectations plainly expressed by Richard and Barbara in the document.

The unambiguous language of the Agreement expressed the parties' intention to completely sever all ties between them. Aside from specifically assigning each party his and her retirement accounts, the Agreement contained broad mutual waivers. *See* Agreement, Appendix 2, para. 3; R.A. 33 ("Wife does hereby waive, release, and relinquish unto Husband, his heirs and assigns forever, all of her right, title, and interest in and to all property now owned or hereafter acquired by Husband, including the right of dower, and does further waive, release, and relinquish all claims of future support or maintenance that she may have against him except as hereinafter set forth in this agreement"). The waiver as to the retirement accounts was also clear: the parties each disclaimed "any interest" in each other's account and agreed to make no claim against the same, including in the "future." The parties therefore contemplated and expected that all "ties" between them would be extinguished by the divorce and they would each be divested of any interest in all property held by the other. The Court of Appeals' opinion is contrary to this basic intention and to the reasonable expectations undoubtedly held by the majority of divorcing parties in Kentucky.

## V. THE COURT OF APPEALS ERRED BY FAILING TO CONSIDER SIGNIFICANT AND PERSUASIVE OUT OF STATE AUTHORITY WHICH UNEQUIVOCALLY SUPPORTS RUTH ANN'S POSITION

This issue was preserved for appellate review by inclusion in Ruth Ann's Motion to Declare and Memorandum of Law, and in her Appellate Brief and Reply Brief. (R.A. 28; R.A. 50.)

Numerous courts have recognized language similar to that used in the Agreement at issue as effectively waiving beneficiary interests in an asset. The Court of Appeals erred by failing to consider any persuasive authority from other jurisdictions. In all, at least eleven jurisdictions considering the issue have enforced language like that utilized here as waiving and terminating the ex-spouse's beneficial interest in non-probatable assets, including both life insurance individual policies and retirement accounts.

In *Kruse v. Todd*, 389 S.E.2d 488 (Ga. 1990), the parties' divorce decree awarded each spouse his or her individual IRAs and stated that the former spouse "shall have no interest therein." *Id.* at 490. Each further waived and released "his or her respective rights and claims against the other or the estate of the other..." *Id.* The property settlement agreement never mentioned beneficiaries specifically, and the Court based its ruling on the language stating that the wife would have "no interest therein," which the Court found to include a beneficiary interest. *Id.* at 493. The Court held that the language of the property settlement agreement "clearly and unambiguously expresses the intent of the parties that [Wife] release any interest in any IRA of which [Husband] was the designated depositor, named owner, or recipient." *Id.* The Court awarded the beneficiary interest to the husband's estate instead of to his former wife, even though she was the named beneficiary. *See also DeRyke v. Teets*, 702 S.E.2d 205, 206 (Ga. 2010) (language in property settlement agreement stating that each party "expressly waives all of his or her right, title and interest in and to any pension, profit sharing, or employee

benefits plans of the other Party" was sufficient to waive right to claim status as designated beneficiary of employment benefits, including life insurance and account of accumulated securities); *Johnson v. Johnson*, 746 P.2d 1061, 1063 (Idaho App. 1987) (where language of the decree stated that IRA was awarded to the husband for his "sole and separate use and benefit, free and clear of any claims of" his wife, the language of the decree could "reasonably be construed as a relinquishment" of the beneficiary interest, and the IRA was awarded to husband's estate); *Ridley v. Metropolitan Federal Bank FSB*, 544 N.W. 2d 867, 868 (N.D. 1996) (where husband and wife were each awarded their IRA "free of any interest of the other," the wife would not receive the proceeds of the IRA even though she was the named beneficiary due to the language of the decree; "The earlier contractual designations of survivorship rights to [wife] were specifically nullified").

In *Matter of Estate of Bruner*, 864 P.2d 1289 (Okla. Ct. Div. 1 1993), the wife was listed as the beneficiary of the husband's IRA. However, as part of the divorce, the wife received certain assets, including her IRA, and the husband received his IRA. The Court interpreted the Agreement to mean that the wife waived any interest she had in the husband's IRA given the fact she received property in exchange for the husband receiving his IRA. The Court found that the wife could not claim the beneficiary interest even though she was still the named beneficiary of the IRA, holding, "Decedent's estate has a better right to these funds than does [wife]." *Id.* at 1292.

In *Larsen v. Northwestern National Life Ins. Co.*, 463 N.W.2d 777 (Minn. App. 1991), the husband and wife executed a property settlement agreement which stated, "[e]ach party may be awarded all right, title and interest in those life insurance policies

covering his or her respective life." *Id.* at 780. The property settlement agreement was then incorporated into the divorce decree. When the wife died, the former husband brought an action against the insurer and the personal representative of her estate.

The trial court granted summary judgment in favor of the personal representative and ordered the proceeds of the policy paid to the estate. The Court of Appeals affirmed, holding that the language in the property settlement agreement was sufficient to divest the former husband of his right as beneficiary of the life insurance policy, even though that language did not specifically mention the "beneficiary" interest of the parties, and even though the former wife did not execute a change of beneficiary form with the insurer. *Id.* at 780. Discussing the language of the property settlement agreement, the Court held:

> Although neither the stipulation nor the dissolution decree specifically referred to the beneficiary designation of decedent's life insurance policy, we believe the references in the decree and stipulation granting "*all right, title and interest*" contemplated rights beyond the cash surrender value of the policy or the right merely to receive physical delivery of the policy. It is a well established rule of law that where the intention of the parties may be gained wholly from the writing, the construction is for the court. *Donnay v. Boulware,* 275 Minn. 37, 44, 144 N.W.2d 711, 716 (1966).
>
> When read in concert with the provisions in the stipulation by which decedent and Larsen each were awarded items of property free and clear of any claim to such property by the other, it is clear the provision awarding decedent all interest in her insurance policy was intended to divest Larsen of his right as beneficiary. We do not believe such an interpretation gives the settlement broader scope than its expressed terms.

*Id.* at 780 (emphasis in original). The Court further explained that the waiver of the beneficiary interest was effective, despite the wife not executing a separate form with the insurance company to change the named beneficiary:

> A change of beneficiary of an insurance policy may be effectuated without notice to the insurer where the insured's efforts are otherwise in substantial compliance with the requirements imposed by the contract. "The rule generally applied is that equity regards that as done which ought to have been done." *Brown v. Agin,* 260 Minn. 104, 109, 109 N.W.2d 147, 150 (1961).

*Id.* at 780.

In the instant case, the Court of Appeals attempted to distinguish "ownership" from "beneficial" interest, finding that the Agreement is "silent as to the beneficial interest." Opinion, Appendix 1, p. 5. However, Paragraph 5 of the Property Settlement Agreement does not differentiate between "ownership" and "beneficial" interests. Rather, it unequivocally states that both parties agree to make "no claim upon any interest owned by the other, now or in the future" in each other's retirement accounts. This language is sufficient to divest each of all interest in the other's retirement accounts, whether that "interest" is characterized as "actual ownership;" "beneficial ownership;" an "expectancy;" or a "future claim."

Likewise, in *In the Matter of the Marriage of Keller*, 222 P.3d 1111 (Or. App. 2009), the husband and wife, Roy and Norma, were divorced in 2001. Their property settlement agreement and stipulated judgment awarded certain insurance policies to Roy. When Roy died in 2006, Norma was listed as beneficiary on those policies. The executor of Roy's estate requested that Norma execute a document disclaiming her interest in the insurance proceeds. When Norma refused, Roy's estate moved for an order holding Norma in contempt under the dissolution judgment, as one of its provisions required each party to "execute and deliver to the other party any and all documents necessary to effectuate the terms of this judgment." *Id.* at 1113. The trial court did not find Norma in

contempt, and the executor appealed. The Court of Appeals reversed and remanded. The language in the parties' stipulated judgment provided:

> Subject to the provision of this judgment, each party releases and relinquishes **any and all claims** or rights which he or she may now have, may have had, **or may have in the future** against the other as a result of the marriage of the parties, including but not limited to spousal support.

*Id.* (emphasis added).

The Court held that the trial court erred in failing to analyze the specific language in light of the parties' intent, and remanded for additional factual findings concerning the parties' intent. The Court also made clear that the language concerning "future claims" could effectively disclaim the parties' beneficiary interests if they so intended.

The Agreement between Richard and Barbara is even more specific than that found in the *Keller* stipulated judgment, as the language at issue here specifically names "retirement accounts," whereas the *Keller* language did not. Like the language in the *Keller* stipulated judgment, the language at issue here makes clear that neither party will make a claim on the retirement accounts of the other now or "in the future." A claim as a beneficiary is necessarily a "future claim."

The language at issue is also more specific than the waiver in *Larsen,* 463 N.W.2d at 780. In *Larsen*, the parties disclaimed all "right, title, and interest," which the Court found sufficient to waive the beneficiary interest. The waiver did not specifically mention "future" claims, yet the Court held that the language was sufficient and affirmed the trial court's order awarding the insurance proceeds to the estate. *Id.* Here, the language in the property settlement agreement clearly waived Appellant's beneficiary interest in the Dreyfus IRA. The parties' intent may be determined from the language of the Agreement, under which each disclaimed all interest in certain assets held by the

other in exchange for the award of certain other property under the Agreement. *See Laresen*, 463 N.W.2d at 780 ("...where the intention of the parties may be gained wholly from the writing, the construction is for the Court.")

This result is consistent with the published Kentucky authority of *Ping*, 562 S.W.2d 314 and *Hughes*, 900 S.W.2d 606. Both the *Ping* and the *Hughes* Courts emphasized that the particular assets at issue were not disposed of in any manner in the parties' settlement agreements. *See Ping,* 562 S.W.2d at 317 ("In the case at bar, there is nothing in the record to indicate that the terms or provisions of the decree of dissolution of marriage ... made any provision for the disposition of the policy of insurance **or** of any interest of the named beneficiary" (emphasis added); *Hughes,* 900 S.W.2d at 607 (noting that the property settlement agreement "**did not specifically address the insurance policies**, but merely contained a comprehensive 'mutual release' clause") (emphasis added). *See also Napier v. Jones*, 925 S.W.2d 193, 196 (Ky. App. 1996) ("When a circuit court has decided the issue of ownership of specific property **and made provision for it in the divorce decree, *Ping* is inapplicable**") (emphasis added).

Additional recent case law from other jurisdictions supports Ruth Ann's position. In *Rice v. Webb*, 844 N.W.2d 290 (Neb. 2014), the former husband's estate filed a motion to compel the ex-wife to withdraw her claim to the proceeds of the former husband's life insurance policies. The ex-wife, Brenda, was the designated beneficiary of the policies owned by her ex-husband, Dale. The settlement agreement provided:

> [Brenda] shall be awarded interest in all pension plans, stocks, retirement accounts, 401(k), IRA, life insurance policy and checking or savings account in [Brenda's] name, free from any claim of [Dale] including all ownership interest in the LincOne Federal Credit Union joint account. [Dale] shall be awarded all interest in any pension plans, stocks, retirement accounts, 401(k), IRA, life insurance policy and checking or

> savings account in [Dale's] name, free from any claim of [Brenda]. The parties shall divide evenly the sums in the LincOne Credit Union accounts. *Id.* at 293.

The agreement further provided that the parties "release and discharge, as between themselves, of all rights, claims, interests and obligations of each party in and to the said properties and the same in their entirety constitute a full, fair and equitable division and partition of their respective rights, claims and interests in and to the said properties of every kind and nature." *Id.* Finally, the agreement stated that Brenda "also waives and relinquishes any and all interest, present and future, in any and all property, real, personal, or otherwise, now owned by [Dale] or hereafter acquired . . . ."

The Nebraska Supreme Court affirmed the trial court's finding that, under the unambiguous terms of the agreement, Brenda waived her status as the designated beneficiary of Dale's life insurance policies. *Id.* at 298. The trial court determined that, "under the property settlement agreement, Brenda and Dale intended to relinquish their beneficiary and ownership interests in each other's life insurance policies and retirement accounts." *Id.* at 297-98. The Court so found despite the fact that (as here) the agreement did not specifically mention "beneficiary" interests; rather, the agreement specifically waived "all interest in all . . . life insurance polic[ies]" and further released all "rights, claims and interest in and to the said properties of every kind and nature." This is similar to the language here, in which the parties agreed to make no claim, including any future claim, against "any interest" in the other's retirement accounts.

The Court further noted that, under Nebraska law (as in Kentucky), the mere fact of a divorce "does not affect a beneficiary designation in a life insurance policy." *Id.* at 299. "But a spouse may waive such a beneficial interest in a divorce decree." *Id.* The

Court cited *Pinkard v. Confederation Life Ins. Co.*, 647 N.W.2d 85 (Neb. 2002). There, the husband was awarded "as his sole and separate property all right, title, and interest in all pension plans, employee benefit plans, and 401K plans, including workers' compensation benefits, received by reason of his employment," while the wife received "as her sole and separate property all right, title, and interest in all pension plans, employee benefit plans, and any other benefits received by reason of her employment." *Id.* at 86. The Court held that the ex-wife had waived her beneficial interest in an annuity owned by the ex-husband, although she was the designated beneficiary at the time of his death:

> [W]e believe that the focus of the inquiry should be upon the language of the dissolution decree and any agreement which sets forth the intentions of the parties concerning property rights. If the dissolution decree and any property settlement agreement incorporated therein manifest the parties' intent to relinquish all property rights, then such agreement should be given that effect. We make no distinction among IRA's, life insurance proceeds, or other types of annuities that designate the beneficiary in the event of the death of the payee. Each case must be evaluated based upon the facts indicating the parties' intent. *Id.* at 89.

Both *Pinkard* and *Rice* applied the foregoing standard, holding that the claimant had waived any status as a designated beneficiary through the language of the decree. In reaching its decision, the *Pinkard* Court further compared two Iowa cases cited by the parties. The Court explained:

> In *Lynch v. Bogenrief,* 237 N.W.2d 793 (Iowa 1976), the ex-spouse was awarded retirement system death benefits because the dissolution decree **made no mention of the death benefits payable and therefore did not control the contingent interest of the ex-spouse.** An opposite result was reached in *Sorensen v. Nelson,* 342 N.W.2d 477 (Iowa 1984), in which the provisions of the dissolution decree disposed of the life insurance policy proceeds. The parties had relinquished all rights not expressly provided for in the agreement, and the court held that such language evidenced the parties' intent to "'wipe the slate clean.'" *Id.* at 481.

*Pinkard,* 647 N.W.2d at 89 (emphasis added).

Here, as in *Sorensen*, *Pinkard*, and *Rice*, the decree specifically disposed of and waived "any interest" in the retirement accounts, evidencing the parties' intention to "wipe the slate clean." *Id.* Therefore, as previously noted herein, this case does not fall within the *Ping* rule that an agreement that fails to specifically dispose of an asset does not waive the beneficial interest in that asset. The reasoning of the line of Iowa and Nebraska cases supports this conclusion. The Dreyfus account was specifically awarded to Richard in exchange for other assets awarded to Barbara, and Barbara waived all interest and future claims to Richard's retirement accounts.

In *Henning v. Didyk*, 438 S.W.3d 177, (Tex. App. 2014), the decree provided that the Husband was awarded as his sole and separate property "all right, title, and interest, and claim in and to the property listed in Schedule 'A', attached to this *Decree* and incorporated herein as if fully set out, and WENDY JEANELLE DIDYK is divested of all right, title, and interest, and claim in and to that property." *Id.* at *1. Schedule A provided in pertinent part:

> All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the husband's past, present, or future employment. *Id.*

The ex-wife, who was the designated beneficiary of the Husband's life insurance policy at the time of his death, asserted that she waived her rights to the life insurance policy "but not the *proceeds* of the policy." *Id.* at 186 (emphasis in original).

The Court concluded that, under the unambiguous language of the decree, the ex-wife waived "her ownership interest regarding the decedent's life insurance policy and any claim to future proceeds." *Id.* at *12. The Court held that the language divesting the ex-wife of "all right, title interest and claim" to "all sums" "matured or unmatured, accrued or unaccrued, vested or otherwise" demonstrated the parties' intent for the ex-wife to surrender "not only her rights regarding the life insurance policy, but also any claim to future proceeds she might have had as the designated beneficiary of the policy." *Id.* at *11.

The Agreement at issue here contains both a broad waiver as well as the more specific waiver applicable to the parties' retirement accounts. *See also Sanderlin v. Sanderlin,* 929 S.W. 121 (Tex. App. 1996) (holding that "all-encompassing" settlement agreement demonstrated intention of the parties with regard to ex-husband's teacher retirement, compelling finding that ex-wife not receive any proceeds of ex-husband's teacher retirement despite her status as designated beneficiary); *Jernigan v. Scott*, 518 S.W.2d 278, 284 (Tex. App. 1975) (where settlement agreement language is consistent with intent to finally dispose of "all matters of controversy, present and future, between the parties, it would be unreasonable to adopt a construction which frustrates such intention"). Here, similarly, the parties each relinquished "any interest" in and waived their rights to make any "future claim" to the retirement accounts held by the other. The reference to "future" claims in particular demonstrates the intention to release any beneficial interest in the other's retirement accounts.[3] *See also Romero v. Melendez*, 498

[3] The *Henning* Court relied on *McDonald v. McDonald*, 632 S.W.2d 636 (Tex. App. 1982). There, the Court held that language in the divorce decree under which the husband was awarded as his sole and separate property "any and all insurance, pension, retirement benefits, and other benefits arising out of Respondent's (decedent's) employment." *Id.* at 637. At the time of his death, the decedent had not

P.2d 305, 309 (N.M. 1972) (holding that divorce decree, which awarded the husband's life insurance policies as his sole and separate property, divested the wife of "any and all interest" in the policies, including any beneficial interest; "where the insurance policy has been dealt with by the divorce decree, the ownership in the policy and the benefits therefrom reside in the party who takes the policy under the decree"); *Brewer v. Brewer*, 390 S.W.2d 630, 630 (Ark. 1965) (holding that insurance proceeds were payable to the ex-husband's estate where ex-wife had executed a property settlement agreement in which she "transferred and released any and all interest in" decedent's life insurance policies).

Numerous other jurisdictions would uphold the language in the Agreement as waiving and relinquishing Barbara's status as the designated beneficiary of the IRA. The Court of Appeals erred by failing to consider and follow this persuasive authority.

## CONCLUSION

Parties to a divorce often relinquish rights to retirement accounts in exchange for other assets. Barbara chose to relinquish her rights to Richard's IRA. In consideration of that contractual promise, Barbara retained all interest in her own IRA. Likewise, Richard

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changed the wife as the beneficiary of his insurance policies. The Court reversed a judgment holding that the wife, as the named beneficiary, was entitled to the proceeds. The Court held that the effect of the divorce judgment "was to divest [wife] of her then existing rights in the future proceeds of the two policies in question." *Id.* at 638. It concluded that the evidence sufficiently rebutted any presumption under Texas law arising from the failure of the husband to change the designated beneficiary prior to his death. *Id.*

Similarly, in *Spiegel v. KLRU Endowment Fund*, 228 S.W.3d 237 (Tex. App. 2007), the Court held that language in a property settlement agreement revoked the husband's status as beneficiary of the wife's non-probatable assets, even in the absence of specific language concerning the beneficial interest. The Court held that the reasoning of *McDonald* is sound:

> because it incorporates the presumption that people who are divorcing intend to revoke beneficiary designations in favor of their soon-to-be ex-spouses in the absence of explicit language to the contrary. This presumption comports with common sense and has been mandated by the legislature in the vast majority of cases. *Id.* at 245.

relinquished all rights, including any claim as a beneficiary, to Barbara's IRA. The Agreement between the parties makes clear that the parties intended to abandon all rights each had to the other's IRA. This necessarily includes a "beneficiary" interest of either party.

The Court of Appeals erred by extending *Ping* and *Hughes* to the facts of this case. *Ping* and *Hughes* concern insurance policies that were not specifically mentioned, much less divided, in the divorce decree or property settlement agreement. Under *Hughes*, and the reasoning of *Napier v. Jones*, the language in the Agreement is sufficient to divest Barbara of her rights in the IRA, as it specifically identifies the parties' retirement accounts rather than broadly waiving rights in all property owned by the other party. Numerous other jurisdictions have held that language similar to the divestiture language at issue here is sufficient to disclaim all rights, including a beneficiary interest, in the account upon divorce, thereby precluding a claim such as that made by Barbara here.

It would be inequitable for Barbara to receive as "beneficiary" an IRA as to which she unambiguously waived all rights upon dissolution of the marriage. Moreover, Barbara received other property in exchange for her waiver of all claims to Richard's IRA. Barbara should not receive the benefit of an account as to which she expressly agreed to waive all rights sixteen years prior to Richard's death based upon his failure to execute an internal document with Dreyfus. Such a result would be contrary to the unambiguous written contract executed between the parties and their clear intent and expectations as part of their divorce and property settlement agreement.

For the foregoing reasons, the Court of Appeals Opinion should be reversed.

Respectfully submitted,

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APPENDIX

1 - November 22, 2013 Court of Appeals Opinion Affirming

2 – April 30, 2012 Motion to Declare That Barbara Lois Van Buskirk Has No Rights In and To Dreyfus IRS Account Number 0265-0557857091

3 – May 15, 2012 Order

4 – June 4, 2012 Memorandum of Law

5 – June 27, 2012 Order Overruling